

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
ETHAN ALLEN INC.**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Ethan Allen Inc., for the purpose of resolving certain alleged violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “Ethan Allen Inc.” means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the structure located in Dublin, Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means Title V Operating permit, which became effective August 23, 2000 and expires August 23, 2005.
10. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Ethan Allen Inc. owns and operates a facility in Dublin, Virginia. This facility is the subject to the Permit and 40 CFR 63 Subpart JJ for wood furniture manufacturers.
2. DEQ alleges certain violations of the Air Pollution Control Law and Regulations. These problems, noted in a Notice of Violation issued by DEQ on July 7, 2003 resulted from DEQ's Partial Compliance Evaluation on June 2, 2003. During this evaluation, staff observed the following:
 - A) Staff's review of the Leak Inspection records indicated that the facility has not conducted/recorded leak inspections in accordance to the Work Practice Implementation Plan. Staff's findings indicated that these records were not properly maintained from February through May 2003.
 - B) Staff's review of the Leak Repair Log indicated that the facility has not maintained/recorded the leak repairs in accordance to the Work Practice Implementation Plan. Staff's findings indicated that these records had not been maintained from November 2002 through May 2003.
 - C) Staff's review of the records indicated that the facility had not maintained the Leak Inspection and Leak Repair records in accordance with 40 CFR 63 Subpart JJ.

The observations above are cited under the following regulations and the applicable Permit Conditions:

- A) 40 CFR 63 Subpart JJ requires the facility to develop and maintain a written Leak Inspection plan and visually inspect all equipment used to transfer/apply material containing organic HAPs.
- B) 40 CFR 63 Subpart JJ requires the facility to develop and maintain a written Leak Repair Log for all equipment used to transfer/apply materials containing organic HAPs.

- C) 40 CFR 63 Subpart JJ requires the facility to develop and maintain onsite a Work Practice Implementation Plan and all records associated with fulfilling the requirements of that plan, including the Leak Inspection and Leak Repair Logs collected in accordance with the plan.
3. Ethan Allen Inc. claims to have corrected the problems cited in the Notice of Violation. On July 10, 2003, Ethan Allen provided a written response to the Notice of Violation wherein Ethan Allen stated that it maintained all required records in compliance with 40 CFR 63 Subpart JJ as well as its Work Practice Implementation Plan.
 4. In the interest of settlement, the parties enter into this Special Order by Consent without the trial or adjudication of any issue of fact for law herein and without this Special Order by Consent constituting any evidence or admission by any party hereto with respect to any issue of law or fact herein.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Ethan Allen Inc., and Ethan Allen Inc. agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Ethan Allen Inc., and Ethan Allen Inc. voluntarily agrees to pay a civil charge of **\$11,212.50** in settlement of the violations cited in this Order.

1. **\$112.13** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Ethan Allen Inc.'s Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. **\$11,100.37** of this civil charge shall be satisfied upon completion by Ethan Allen Inc. of two Supplemental Environmental Projects (SEP), one of which is a Pollution Prevention Project (P2), pursuant to Virginia Code 10.1-1186.2 and as described in Appendix B of this Order.
3. The Department has the sole discretion to:

- a. authorize any alternate SEP proposed by the Facility; and
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. Should the Department determine that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify Ethan Allen Inc. of such determination in writing. Within 30 days of such notification, Ethan Allen Inc. shall pay the amount specified in Paragraph 2 above in accordance with the procedures specified in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ethan Allen Inc., for good cause shown by Ethan Allen Inc., or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Ethan Allen Inc. by DEQ on July 7, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. By entering into this Order, Ethan Allen Inc. neither admits nor denies the factual findings or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, Ethan Allen Inc. agrees not to challenge the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. For purposes of this Order and subsequent actions with respect to this Order, Ethan Allen Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Ethan Allen Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Ethan Allen Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review

of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

7. Failure by Ethan Allen Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Ethan Allen Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ethan Allen Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ethan Allen Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Ethan Allen Inc. Notwithstanding the foregoing, Ethan Allen Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.

12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Ethan Allen Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ethan Allen Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, Ethan Allen Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day ____ of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Ethan Allen Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2003, by _____, who is
(name)

_____ of Ethan Allen Inc., on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Ethan Allen Inc. shall:

1. Within fourteen (14) days from the effective date of the Order, submit to the DEQ, records demonstrating that the Work Practice Implementation Plan has been updated with the most current Leak Inspection forms.
2. Within fourteen (14) days from the effective date of the Order, submit to the DEQ, records demonstrating that the Work Practice Implementation Plan has been updated with the most current Leak Repair Log forms.

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The SEPs to be performed by Ethan Allen Inc. are as follows:

Project 1 - Upgrading some or all of the existing airless spray gun systems with new air-assisted airless (hydraulically assisted) spray gun systems, improved regulators, and enclosed material pumps for the Glaze Application Area of the Finishing Department.

Project 2 (P2) - Removal and disposal of three (3) existing PCB containing capacitors and installation of three (3) new non-PCB containing capacitors.
2. The SEPs shall be completed by November 30, 2004.
3. Ethan Allen Inc. certifies that they have not commenced performance of the SEPs prior to the identification of the violations cited in this Consent Order and the approval of the SEPs by the Department.
4. The net cost of the SEPs to Ethan Allen Inc. shall not be less than **\$11,100.37**. In the event that the final net cost of the SEPs is less than this amount, Ethan Allen Inc. shall pay the remainder of the amount in accordance with Paragraph D. 3. of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. Ethan Allen Inc. acknowledges that it is solely responsible for completion of the SEP projects. Any transfer of funds, tasks, or otherwise by Ethan Allen Inc. to a third party, shall not relieve Ethan Allen Inc. of its responsibility to complete the SEPs as contained in this Order.
6. Ethan Allen Inc. shall provide the Department with written verification of completion or progress reports of the SEPs by providing a work schedule. The project completion or progress reports verification must be submitted to the Department within 30 days from the effective date of the Order on a quarterly basis, due the 10th day of each quarter.
7. Ethan Allen Inc. shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation of the final overall and net cost of the SEPs within 30 days of the project completion date. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from Ethan Allen Inc.'s Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. In the event that Ethan Allen Inc. publicizes the SEPs or the results of the SEPs, Ethan Allen Inc. shall state in a prominent manner that the project is part of a settlement for an enforcement action.
9. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Robert W. Saunders
Department of Environmental Quality
West Central Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

SUPPLEMENTAL ENVIRONMENTAL PROJECT
ANALYSIS ADDENDUM

VA CODE §10.1-1186.2.A

Case Name: *Ethan Allen Inc. – Notice of Violation Number 070703*

Project Description:

Project 1 - Upgrading some or all of the existing airless spray gun systems with new air-assisted airless (hydraulically assisted) spray gun systems, improved regulators, and enclosed material pumps for the Glaze Application Area of the Finishing Department.

Explain how the project is environmentally beneficial:

Enclosed Material Pumps:

This project will result in a reduction of leaks and fugitive emissions from the current transfer pumps. The material to be pumped is a Glaze. The physical nature of the Glaze material is abrasive and frequently requires maintenance to prevent leaks in the system. By replacing these pumps with an Enclosed Material Pump, the possibility of leaks and emissions are eliminated due to the sealed housings and durable nature of the Pumps for abrasive material. Enclosed Material Pumps are typically not used in the furniture industry and are proposed as a unique application to finishing operations from proven technology used elsewhere. In addition, the Enclosed Material Pumps will require less compressed air while operating, thus reducing the required energy demand by the air compressor.

Air Assisted Spray Guns and Regulators:

This project will result in a reduction in coatings used by increasing the transfer efficiency of the application process. A reduction in coatings used will lead to a reduction in PM and VOC emissions generated and emitted to the atmosphere.

Initial Penalty Computation, Cost of SEP and Final Penalty:

<i>Initial Penalty</i>	=	<i>\$11,212.50</i>
<i>Estimated cost of SEP</i>	=	<i>\$11,596.00</i>
<i>Project 1 (SEP) Credit</i>	=	<i>\$ 8,409.37</i>
<i>Project 2 (P2) Credit</i>	=	<i>\$ 2,691.00</i>
<i>Final Penalty</i>	=	<i>\$ 112.13</i>

The estimated cost for this project is between \$11,500 and \$15,000 per system upgrade. Records of actual costs will be submitted to the WCRO and credited against the amount of the civil penalty that can be offset with SEP/P2 projects.

SEP Not Otherwise Required by Law:

The existing HVLP spray guns are in compliance with all applicable state and federal regulations. The Wood Furniture Manufacturing MACT Standard – Subpart JJ only limits the use of “conventional air guns” that apply coatings at air pressures greater than 10 psi. The existing HVLP spray guns are not “conventional air guns” because they apply coatings at pressures below 10 psi. Therefore, the replacement of HVLP spray gun systems is not a requirement of the Subpart JJ MACT standard.

Is there reasonable geographic nexus? If YES, explain:

The proposed projects will occur at the Ethan Allen Inc. facility in Dublin, VA, and the environmental benefits will impact the immediately surrounding area.

Check all the qualifying categories that may apply:

- | | |
|--|---|
| <input type="checkbox"/> public health | <input type="checkbox"/> environmental restoration and protection |
| <input type="checkbox"/> environmental compliance promotion | <input checked="" type="checkbox"/> pollution reduction |
| <input type="checkbox"/> emergency planning and preparedness | <input checked="" type="checkbox"/> pollution prevention |

Each of the following factors MUST be considered. Respond to each:

- ☒ Net costs (zero out all government loans, grants, tax credits for project). Explain:

No government loans, grants or tax credits will be secured for this project. The exact cost for this project has not been determined. The estimated cost is between \$11,000 and \$15,000 per system upgrade. Ethan Allen Inc. will provide records of actual costs to the WCRO upon completion of the project.

- ☒ Benefits to the public or the environment. Explain:

Reducing the emissions of PM and VOC from the facility will benefit both the public and the environment through improved aesthetics and air quality. The transfer efficiency of the guns will reduce emissions from Glaze Booth Stacks by decreasing over spray.

- ☒ Innovation. Explain:

By replacing these pumps with an Enclosed Material Pump, the possibility of leaks and emissions are eliminated due to the sealed housings and durable nature of the Pumps for abrasive material. Enclosed Material Pumps are typically not used in the furniture industry and are proposed as a unique application to finishing operations from proven technology used elsewhere.

☐ Impact on minority or low income populations. Explain:

N/A

☒ Multimedia impact. Explain:

No additional waste streams will be generated from this project. By reducing the amount of coatings used and the amount of over spray, there will be a proportional reduction in solid waste generated from the facility.

☒ Pollution prevention. Explain

This project will reduce over spray, which will reduce air emissions. By reducing the over spray, the facility will reduce the amount of solid waste generated on the dry filter material in the spray booths.

SUPPLEMENTAL ENVIRONMENTAL PROJECT
ANALYSIS ADDENDUM

VA CODE §10.1-1186.2.A

Case Name: *Ethan Allen Inc. – Notice of Violation Number 070703*

Project Description:

Project 2 - Removal and disposal of three (3) existing PCB containing capacitors and installation of three (3) new non-PCB containing capacitors.

Explain how the project is environmentally beneficial:

By replacing these capacitors, this project will result in an elimination of possible contamination from accident or emergency situation that could result in the release of PCB material into the environment.

Initial Penalty Computation, Cost of SEP and Final Penalty:

<i>Initial Penalty</i>	=	<i>\$11,212.50</i>
<i>Estimated cost of P2</i>	=	<i>\$ 3,000.00</i>
<i>Project 1 (SEP) Credit</i>	=	<i>\$ 8,409.37</i>
<i>Project 2 (P2) Credit</i>	=	<i>\$ 2,691.00</i>
<i>Final Penalty</i>	=	<i>\$ 112.13</i>

The estimated cost for this project is between \$1,000 and \$1,500 per capacitor upgrade. Records of actual costs will be submitted to the WCRO and credited against the amount of the civil penalty that can be offset with SEP/P2 projects.

SEP Not Otherwise Required by Law:

The existing capacitors are in compliance with all applicable state and federal regulations. Therefore, the replacement of capacitors is not a requirement of the state or federal law.

Is there reasonable geographic nexus? If YES, explain:

The proposed projects will occur at the Ethan Allen Inc. facility in Dublin, VA, and the environmental benefits will impact the immediately surrounding area.

Check all the qualifying categories that may apply:

☐ public health ☒ environmental restoration and protection

- ☐ environmental compliance promotion ☐ pollution reduction
- ☐ emergency planning and preparedness ☒ pollution prevention

Each of the following factors MUST be considered. Respond to each:

- ☒ Net costs (zero out all government loans, grants, tax credits for project). Explain:

No government loans, grants or tax credits will be secured for this project. The exact cost for this project has not been determined. The estimated cost is between \$1,000 and \$1,500 per capacitor upgrade. Ethan Allen Inc. will provide records of actual costs to the WCRO upon completion of the project.

- ☒ Benefits to the public or the environment. Explain:

This project will eliminate the possibility for PCB containing material to be released into the environment. By eliminating the possibility of a release, the surrounding geographic nexus is improved.

- ☐ Innovation. Explain:

N/A

- ☐ Impact on minority or low income populations. Explain:

N/A

- ☐ Multimedia impact. Explain:

N/A

- ☒ Pollution prevention. Explain

This project will eliminate the possibility of PCB release into the environment.